85-1363

No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

TIMOTHY V. O'MAHONY,

Petitioner,

v.

CHICAGO TRANSIT AUTHORITY,
a municipal corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether petitioner's Fourteenth Amendment "liberty" interest should prevail when there is a split amongst the federal courts of appeal as to the stigmatizing character of charges of incompetence that were raised at the time of petitioner's dismissal.

2. Whether petitioner's Fourteenth Amendment "property" interest in continued employment can be abrogated by state statute.

3. Whether petitioner has a right to sue in federal court under section 13(c) of the Urban Mass Transportation Act of 1964 as amended when there are no state remedies of federal administrative remedies available.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Petitioner, Timothy V. O'Mahony respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on November 15, 1985.

OPINION BELOW

The Court of Appeals entered its decision (Appendix "A") that the judgment of the United States District Court for the Northern District of Illinois, in this action

appealed from, be affirmed for the reasons set forth in the District Court's "Order" of August 30, 1983 (Appendix "B") and "Memorandum Opinion" of March 12, 1985 (Appendix "C"), said opinions appended to the judgment of the Court of Appeals; and for an additional reason cited in said judgment.

JURISDICTION

The judgment sought to be reviewed was entered by the Court of Appeals on November 15, 1985. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment XIV, Section I

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No person shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS INVOLVED

United States Code, Title 42, Section 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Illinois Revised Statutes, Chapter 111⅔, Section 327

The Board may appoint an Executive Director who shall be a person of recognized ability and experience in the operation of transportation systems to hold office during the pleasure of the Board. The Executive Director shall have management of the properties and business of the Authority and the employees thereof, subject to the general control of the Board, shall direct the enforcement of all ordinances, resolutions, rules and regulations of the Board, and shall perform such other duties as may be prescribed from time to time by the Board. The Board may appoint a General Attorney and a Chief Engineer, and shall provide for the appointment of other officers, attorneys, engineers, consultants, agents and employees as may be necessary for the construction, extension, operation, maintenance, and policing of its properties. It shall define their duties and require bonds of such of them as the Board may designate. The Executive Director, General Attorney, Chief Engineer, and all other officers pro-

vided for pursuant to this section shall be exempt from taking and subscribing any oath of office. The compensation of the Executive Director, General Attorney, Chief Engineer, and all other officers, attorneys, consultants, agents, and employees shall be fixed by the Board.

In the policing of its properties the Board may provide for the appointment and maintenance, from time to time, of such police force as it may find necessary and practicable to aid and supplement the police forces of any municipality in the protection of its property and the protection of the persons and property of its passengers and employees, or otherwise in furtherance of the purposes for which such Authority was organized. The members of such police force shall have and exercise like police powers to those conferred upon the police of cities.

Illinois Revised Statutes, Chapter 111⅔, Section 328

The Board shall classify all the offices, positions and grades of regular employment required, excepting that of the Chairman of the Board, the Executive Director, Secretary, Treasurer, General Attorney, and Chief Engineer, with reference to the duties thereof and the compensation fixed therefor, and adopt rules governing appointments to any of such offices or positions on the basis of merit and efficiency. No discrimination shall be made in any appointment or promotion because of race, creed, color, sex, national origin, physical or mental handicap unrelated to ability, or political or religious affiliations. No officer or employee shall be discharged or demoted except for cause which is detrimental to the service. Any officer or employee who is discharged or demoted may file a complaint in writing with the Board within ten days after notice of his or her discharge to demotion. If an employee is a member of a labor organization the complaint may be filed by such organization for and in behalf of such employee. The Board shall grant a hearing on such complaint within thirty (30) days after it is filed. The time

and place of the hearing shall be fixed by the Board and due notice thereof given to the complainant, the labor organization by or through which the complaint was filed and the Executive Director. The hearing shall be conducted by the Board, or any member thereof or any officers' committee or employees' committee appointed by the Board. The complainant may be represented by counsel. If the Board finds, or approves a finding of the member or committee appointed by the Board, that the complainant has been unjustly discharged or demoted, he or she shall be restored to his or her office or position with back pay. The decision of the Board shall be final and not subject to review. The Board may abolish any office or reduce the force of employees for lack of work or lack of funds, but in so doing the officer or employee with the shortest service record in the class and grade to which he or she belongs shall be first released from service and shall be reinstated in order of seniority when additional force of employees is required. Seniority shall be considered a working condition and where employees are represented by a labor organization which has any labor agreement with the Authority such working conditions shall be governed by the terms of such agreement.

United States Code, Title 49, Section 13(c)

It shall be a condition of any assistance under Section 3 of this act that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their pensions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees

terminated or laid off; (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of the Act of February 4, 1887 (24 Stat. 379), as amended. The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements.

STATEMENT OF THE CASE

Petitioner was discharged on September 29, 1981 from his position as a security officer in the security department of the Chicago Transit Authority (hereinafter "CTA"), a municipal corporation formed and operated under the Illinois Metropolitan Transit Authority Act, Ill. Rev. Stat., Ch. 111⅔, section 301 *et seq.* (1984). This discharge was accomplished without a pretermination hearing or substantive post-termination hearing that would establish its basis and afford the petitioner an opportunity to refute the same.

Petitioner's discharge was accompanied by publicized charges of incompetence in providing security and which intimated ease in committing thefts at the CTA's primary money counting facility. Further charges alleged incompetence in the failure to provide security to prevent the theft and sale of CTA transfers, the sale and use of drugs on CTA facilities, and theft of CTA supplies and equipment. These charges were made by members of the CTA Board, the Mayor and Police Superintendent of the City of Chicago, and their subordinate administrators.

Petitioner was represented in a collective bargaining agreement with the CTA and in a 13(c) Agreement to which the CTA was a party by Division 241, Amalgamated Transit Union located in Chicago, Illinois (hereinafter "Div. 241").

Several weeks after the petitioner was discharged the CTA informed him that the discharge was due to the "discontinuance" of the entire CTA security department for economic reasons.

At the time of the petitioner's discharge the CTA had received at least 15 federal grants under provisions of the Urban Mass Transportation Act of 1964 as amended.

Basis For Federal Jurisdiction

Petitioner initiated a complaint in the court of the first instance, the U.S. District Court for the Northern District of Illinois, which sought relief under 42 U.S.C. section 1983 for deprivation of his civil rights under color of law.

Petitioner additionally sought relief in the District Court under 49 U.S.C. section 13(c) for violations by the CTA of the petitioner's federal rights to employee protection provisions contained in the Urban Mass Transportation Act of 1964 as amended.

Jurisdiction in the court of the first instance was founded on 28 U.S.C. section 1331.

ARGUMENT

I.

THIS COURT'S SUPERVISORY POWER IS NECESSARILY INVOKED WHEN A SPLIT OF AUTHORITY AMONGST THE FEDERAL COURTS OF APPEAL AS TO THE STIGMATIZING CHARACTER OF CHARGES OF INCOMPETENCY ACTS TO DEPRIVE PETITIONER OF HIS CONSTITUTIONALLY PROTECTED "LIBERTY" INTEREST.

Petitioner's liberty claim for redress turns squarely on whether public charges of incompetency, in conjunction with the equally well-publicized theft of passenger fares, transfers, the sale of drugs and transfers from and about his employer's property, constitutes a stigma to his name and reputation as to infringe his protected interest. It is respectfully submitted that such constitutional protection is afforded petitioner's immediate interest.

The source of petitioner's claim has, of course, evolved from the Fourteenth Amendment, 42 U.S.C. § 1983, and subsequent decisions of this Court delineating the proper bounds of an individual's protected liberty interest. This Court has not passed, however, on the stigmatizing character of incompetency charges in circumstances that are presented here.

Board of Regents v. Roth, 408 U.S. 564 (1972) enunciated the principle that a deprivation of liberty would occasion a charge against the individual which might "seriously damage his standing and associations in his community" or that "foreclosed his freedom to take advantage of other employment opportunities." (408 U.S. at 573) With respect to the former, this Court offered dishonesty and immorality as *examples* of the kind of charges that would impart a stigma to the individual, but notably not as a limitation.

This Court further refined the proper setting for a deprivation of liberty consequent a stigmatizing charge in *Paul v. Davis*, 424 U.S. 693 (1976). *Paul* correctly suggests that damage to reputation alone, without an attendant alteration of a tangible interest such as employment, amounts to nothing more than defamatory conduct capable of redress at state law. Significantly, this Court in *Paul* commented favorably on its earlier decision in *Roth* that found a liberty interest where defamation *was* accompanied by discharge, as was the case with petitioner,

> ". . . *Roth* recognized that governmental action defaming an individual in the course of declining to rehire him could entitle the person to notice and an opportunity to be heard as to the defmation (sic) . . ." (424 U.S. 693, 709)

Petitioner plainly meets the criteria established by the foregoing cases of this Court. His standing in the community was irreversibly altered by the charges of incompetency raised in conjunction with the theft of equipment, passenger fares and transfers, and sale of drugs on his employer's property; he was discharged as a result of these charges; and he has been foreclosed from employment opportunities of equal stature and pay since the time of his discharge. In addition, these charges were prominently printed in major Chicago newspapers (Appendix "D" & "E") (*Bishop v. Wood*, 426 U.S. 341 (1976)); and they were false (*Codd v. Velger*, 429 U.S. 624 (1977)).

Although petitioner has fully satisfied this Court's requirements, the Seventh Circuit has seen fit to impose a further stricture on petitioner's liberty interest, redefining stigma to mechanically exclude charges of incompetency, irrespective of superficial designation or actual stigmatizing effect.

Hadley v. County of DuPage, 715 F.2d 1238 (7th Cir. 1983) summarizes the Seventh Circuit's treatment of stigmatizing incompetency charges,

> ". . . The Seventh Circuit has taken the position that a mere charge of mismanagement is not enough to give rise to a liberty interest requiring a hearing. 'We are satisfied that plaintiff has failed to state a claim under either branch of the *Roth* liberty test. An unelaborated charge of incompetence, neglect of duty and malfeasance of office is a different order of magnitude than charges of dishonesty, immorality, disloyalty, Communism, subversive activities, alcoholism or narcotics violations.' " (715 F.2d 1238, 1245)

Apparently the Seventh Circuit has equated the facial charge of incompetence as falling, regardless of factual setting, within this Court's warning in *Roth* that,

> "Mere proof, for example, that his record of nonretention in one job, taken alone, might make him somewhat less attractive to some other employer would hardly establish the kind of foreclosure of opportunities amounting to a deprivation of liberty." (408 U.S. 564, 574, n.13)

Other circuits, however, have properly looked beyond simple designation to detect an actual stigma to a protected interest.

The Second Circuit was confronted with a fact pattern with identity to the petitioner's in *Quinn v. Syracuse Model Neighborhood Corp.*, 613 F.2d 438 (2nd Cir. 1980). *Quinn* reviewed a public agency director who was discharged amidst publicity which created the public impression that the director was in some fashion responsible for missing agency funds. In responding to the claim that explicit charges of immoral and illegal conduct is necessary to stigma the requisite "liberty" infringing stigma, the court stated,

> "A subtle campaign designed by city officials to make plaintiff the scapegoat for an episode of municipal misfeasance may impose no less an indelible stigma than a public proclamation announced at high noon from the steps of City Hall. Indeed, a carefully conceived scheme of suggestion and innuendo may be all the more devastating to individual liberty because it is more difficult to refute, especially when its architects sit in the highest offices of local government." (613 F.2d 438, 447)

The Fourth Circuit similarly lends its voice to the appropriate analysis of charges of incompetency in *Cox v. Northern Virginia Transportation Commission*, 551 F.2d 555 (4th Cir. 1976). *Cox* concerned an employee who was discharged amid allegations of financial irregularities in the handling of expense accounts. The court comments,

> "The commission defends on the ground that there is no proof that its officers expressly told reporters that Mrs. Cox was dishonest or immoral. It says that, instead, the reporters were told that she was incompetent and failed to establish good relations with the staff. These comments, however, did not dispel the effect of the commissioners' published statements linking Mrs. Cox's discharge to the investigation of financial irregularities. Nor did the absence of formal charges of wrongdoing lessen the injury to her reputation that was caused by the interviews the commissioners granted the press. The opportunity of a discharged public employee to get a new job may be hampered as badly by official leaks to the press insinuating dishonesty as by a published official reprimand. In either event, therefore, the employee is entitled to a hearing." (551 F.2d 555, 558)

McKnight v. Southeastern Pennsylvania Transportation, 583 F.2d 1229 (3rd Cir. 1978) lastly describes the Third Circuit's analysis when presented with an attempt to exempt incompetence charges from the purview of stigma.

Pertinently, an employee had been discharged for "an isolated incident of intoxication (which) reflects intemperance and *unsatisfactory job performance*" (emphasis added) (583 F.2d at 1236). The court stated,

> . . . defendants submit that allegations of harm to reputation resulting from discharge from public employment should be divided into two broad categories; those that involved charges pertaining to the employee's performance on the job itself, and those that ascribe to the employee some broad "status" beyond that necessarily entailed in the job. The idea underlying this suggestion is that only statements of the second sort rise to the level of a deprivation of a person's "liberty." . . .

continuing,

> . . . The alternative to the defendants' suggestion of categorizing different situations is, inevitably, to focus on the particular facts of a specific case in ascertaining whether the cited harm to reputation and employment prospects has actually resulted from the employer's charge. Such concentration on the *facts* of the case at hand is reflected clearly in Supreme Court decisions dealing with claims of a deprivation of "liberty" flowing from discharge from employment. (emphasis added) (583 F.2d 1229, 1237)

See also Fitzgerald v. Mountain Laurel Racing Inc., 607 F.2d 589 (3rd Cir. 1979).

The foregoing appellate cases clearly demonstrate that the assignation of incompetence or similar job performance label, standing alone, does not render otherwise stigmatizing behavior immune from "liberty" interest scrutiny. Equally plain is their need to examine the totality of facts attendant such a discharge to determine whether a stigma has, in fact, been effected. Had such a review been performed instantly, where the totality of facts sur-

rounding incompetence involved highly charged allegations and insinuations of theft and narcotics violations; it is respectfully submitted, that a meritorious infringement of liberty, would have been found.

Two circuits have adopted the Seventh Circuit's extenuated position excluding incompetence charges from a liberty analysis.

Debose v. United States Department of Agriculture, 700 F.2d 1262 (9th Cir. 1983) reveals the Ninth Circuit's constrained reading of this Court's decision in *Roth*. The Court claims that absent a charge of dishonesty or immorality, no serious damage to an individual's standing can be shown. *Accord Stretten v. Wadsworth Veterans Hospital*, 537 F.2d 361 (9th Cir. 1976). *Roth*, however, offers no such limitation; dishonesty and immorality were simply cited as *examples* of a stigma, not a definition.

Mazaleski v. Treusdell, 562 F.2d 701 (D.C. Cir. 1977) similarly reflects a narrow view of *Roth*, delimiting stigma to charges of dishonesty, immorality, degradation or unsavory conduct. Again *Roth* imposes no such restrictive standard.

Arguably, the Tenth Circuit, in *Stritzl v. United States Postal Service*, 602 F.2d 249 (10th Cir. 1979) adopted a similarly restrictive view of *Roth*, yet this same court's divergent view in *Miller v. City of Mission, Kan.*, 705 F.2d 368 (10th Cir. 1983), where a stigma was found from charges of poor job performance, offers a more thorough and recent insignt into that Circuit's position.

In deference to the described cases of this Court and subsequent appellate cases of the Second, Fourth and Third Circuits, petitioner urges that he has fully met the necessary criteria outlined by this Court in stating an infringed liberty interest. Petitioner submits that the

Seventh Circuit's reading of *Roth*, so as to exclude stigmatizing incompetency charges, cannot be logically squared with a reasoned reading of liberty. Accordingly, petitioner asks this Court to exercise its supervisory power to redress the resulting imbalance that has developed amongst the appellate courts by reversing the judgment entered below and remanding this action for trial.

II.

PETITIONER'S CONSTITUTIONALLY PROTECTED "PROPERTY" INTEREST IN CONTINUED EMPLOYMENT, ONCE CREATED, CANNOT BE ABROGATED BY STATE STATUTE.

There can be no serious dispute that petitioner received a protected property interest in his employment by virtue of a provision of the Illinois Metropolitan Transit Authority Act.

> . . . No officer or employe shall be discharged or demoted except for cause which is detrimental to the service. Any officer or employe who is discharged or demoted may file a complaint in writing with the Board within ten days after notice of his or her discharge or demotion. (Ill. Rev. Stat., ch. 111⅔, sec. 328)

Specifically, this provision provides that discharged employees of the CTA can only be discharged for cause and shall be given a hearing if an appropriate complaint is filed. Accordingly, the requisite "property" entitlement is present. See *Board of Regents v. Roth*, 408 U.S. 564 (1972).

Since the petitioner was represented in a collective bargaining agreement by Div. 241, the petitioner elected to have his post-termination hearing in the form of a grievance arbitration pursued by Div. 241. However, this arbi-

tration was limited in its scope of issues and the courts below did not find that this arbitration was a bar to a federal proceeding.

Further, petitioner's property rights to employment entitled him to a due process hearing prior to the CTA taking any action against him which would involve a substantial property interest such as employment. See *Cleveland Bd. of Educ. v. Loudermill*, 84 L.Ed.2d 494 (1985). The petitioner was discharged without a pretermination hearing.

It is not disputed that the CTA had the right to establish or abolish any security force it may choose to create.

> . . . In the policing of its properties the Board may provide for the appointment and maintenance, from time to time, of such police force as it may find necessary and practicable . . . (Ill. Rev. Stat., ch. 111⅔, sec. 327)

However, the employees of any CTA security force must continue to enjoy a property interest to continued employment in any other jobs for which they could qualify.

> . . . The Board may reduce any office or reduce the force of employes for lack of work or lack of funds, but in doing so the officer or employe with the shortest service record in the class and grade to which he or she belongs shall be reinstated in order of seniority when additional force of employes is required. Seniority shall be considered a working condition and where employes are represented by a labor organization which has any labor agreement with the Authority such working conditions shall be governed by the terms of such agreement. (Ill. Rev. Stat., ch. 111⅔, sec. 328)

Plainly, the petitioner had a right to continued employment which should have been accomplished by placing the

petitioner on a recall list. CTA should have attempted to place the petitioner in the next available job for which he could qualify. Contrary to the CTA's representations to the Court of Appeals, the petitioner has not been placed on a recall list at any time since the abolishment of the security department.

Any conflict between the CTA's right to reduce the work force and petitioner's property right to continued employment must be resolved in favor of the petitioner since reasonable reassignment procedures are specified in the state statute.

In deference to the foregoing, it is respectfully submitted that the petitioner has a constitutional property interest in continued employment with the CTA which warrants a reversal of the court below and a trial on the merits.

III.

PETITIONER'S RIGHT TO SUE UNDER SECTION 13(c) OF THE URBAN MASS TRANSPORTATION ACT OF 1964 AS AMENDED [49 U.S.C. SECTION 13(c)].

The petitioner's request that the court direct the U.S Secretary of Labor to withhold federal funds from the CTA for violations of his federally guaranteed employee job protection rights was denied by the court below based on *Jackson Transit Authority v. Transit Union*, 457 U.S. 15 (1982).

Div. 241, which represented the petitioner in a 13(c) Agreement to which the CTA was a party, never took any action to negotiate, mediate, or arbitrate the petitioner's rights under the 13(c) Agreement.

The right to sue in federal court is governed by: existence of a special class under the statute, the remedy

underlying the purpose of the legislative scheme, the legislative history of the statute, and whether there is an appropriate remedy available in state court. See *Cort v. Ash*, 422 U.S. 66 (1975).

The Urban Mass Transportation Act did create a special class to receive federal aid, namely, mass transportation systems. Petitioner as an employee of a federally funded mass transportation system was a member of that special class. The purpose of the legislative scheme was to fund mass transportation systems subject to employee protection provisions in section 13(c) but no specific remedy was stated. The legislative history of UMTA indicates that transit labor organizations would be expected to pursue their members' rights under state remedies.

No conflict with possible state remedies exists in the petitioner's instance since Div. 241 never pursued an arbitration under the 13(c) Agreement. Petitioner is basing his right to sue on the language of section 13(c).

Neither the U.S. Secretary of Labor nor the U.S. Secretary of Transportation have any administrative procedures to handle an administrative complaint for violations of section 13(c).

Section 13(c) clearly states that the federal rights identified there accrue to "individual employes". Since the preferred state remedy was not afforded to the petitioner by his labor organization and there is no federal administrative remedy, the petitioner has no other recourse but to approach the federal courts for a remedy. The Court has left open the possibility of some instances of a federal remedy. See *Jackson Transit Authority, id.*, at footnote 13.

In consideration of these special circumstances, the petitioner should have a right to sue in federal court to seek

a remedy for violations of section 13(c). It is requested that this Court clarify the petitioner's right to sue for the instruction of the courts below.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests this Court to grant his petition for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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Dated: February 12, 1986

APPENDIX A

[UNPUBLISHED ORDER NOT TO BE CITED PER CIRCUIT RULE 35]

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Argued October 29, 1985

November 15, 1985

Before

Hon. JOHN L. COFFEY, *Circuit Judge*
Hon. FRANK H. EASTERBROOK, *Circuit Judge*
Hon. KENNETH F. RIPPLE, *Circuit Judge*

TIMOTHY O'MAHONY, et al.,

Plaintiffs-Appellants,

No. 85-1609 vs.

CHICAGO TRANSIT AUTHORITY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 82 C 5543—**John F. Grady**, *Judge.*

ORDER

We affirm the district court's judgment for the reasons stated in that court's two opinions, which we attach. We add only that the Due Process Clause of the Fourteenth

Amendment does not require personal hearings for systemic changes. When the government abolishes a program for benefits—here abolishes the security department of the Chicago Transit Authority—that is a legislative decision for which personal hearings are both unnecessary and unsuited. *Atkins v. Parker*, 105 S. Ct. 2520, 2529-30 (1985). The remedies for changes in governmental programs are political, not judicial. The plaintiffs have since been reemployed as a result of an agreement with those who bear political responsibility. The political forum was the right one all along.

AFFIRMED

Ripple, *Circuit Judge*, concurring:

I concur in the judgment of the court since I believe that the district court properly disposed of the contentions of the appellants.

I also concur—although with great reluctance—in granting the motion of the appellants that we accept the filing of the briefs which do not conform to our rules. The judges of this court are far too busy to contend with material of this sort. Counsel has an obligation both to this court and to his clients to submit material that will aid—not impede—the decision-rendering process.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TIMOTHY O'MAHONY, et al.,

Plaintiffs,

No. 82 C 5543 v.

THE CHICAGO TRANSIT AUTHORITY, et al.,

Defendants.

ORDER

Count I of this action is brought under 28 U.S.C.A. § 1331(a) and 49 U.S.C. § 13(c), the Urban Mass Transportation Act of 1964. Plaintiffs' claim, basically, is that they were discharged in violation of their "§ 13 agreement." Under § 13 of the Urban Mass Transportation Act of 1964, a state or local government must make arrangements to preserve transit workers' existing collective bargaining rights before that government may receive federal financial assistance for the acquisition of a privately owned transit company.

Defendants have filed motions to dismiss Count I of this complaint on the ground that this court lacks jurisdiction over the subject matter.

We grant defendants' motions to dismiss Count I. In *Jackson Transit Authority v. Local Division 1285, Amalgamated Transit Union, AFL-CIO-CLC,* ___ U.S. ___, 102 S. Ct. 2203 (1982), the Supreme Court made it clear

that § 13(c) does not create federal causes of action for breaches of a § 13(c) agreement or collective bargaining contracts between Urban Mass Transit Act aid recipients and transit unions. As the Court held, the legislative history indicates that Congress intended those contracts to be governed by state law applied in state courts. Therefore, we have no jurisdiction over the claims asserted in Count I of plaintiffs' complaint.

Count II of plaintiffs' complaint seeks relief under 42 U.S.C. § 1983, alleging deprivation of their civil rights under color of law. Defendant Chicago Transit Authority also moves to dismiss Count II on the ground that it fails to state a claim for deprivation of constitutional rights. Since materials outside of the pleadings have been submitted by the parties and considered by the court, we treat this as a motion for summary judgment. *See* Fed. R. Civ. P. 12(b)(6).

Plaintiffs first argue that they had a property interest in their jobs and therefore could not be dismissed without cause. Ill. Rev. Stat. ch. 111⅔, § 328 provides that discharged employees of the Chicago Transit Authority can only be discharged for cause and must be given a hearing if a complaint is filed within 10 days of the discharge. This, however, is not the provision which governs this situation. In our case the Transit Authority totally eliminated the plaintiffs' job position. Under Ill. Rev. Stat. ch. 111⅔, § 327, the Transit Authority has the authority to maintain a police force "from time to time as it may find necessary." We conclude that defendant Chicago Transit Authority was exercising its statutory right to abolish the security force and that plaintiffs did not have a property interest in their jobs. *Accord Woolfolk v. Board of Fire and Police Commissioners of the Village of Robbins*, 79 Ill. App.3d 27, 398 N.E.2d 226 (1st Dist. 1979) (statute permitting the abolition of the police force controlled, rather than the provision providing for discharge for cause).

Plaintiffs also attempt to argue that they had a property interest in their jobs as a result of an agreement reached with a former chairman of the Chicago Transit Authority. This matter was raised in an arbitration proceeding subsequent to the termination of plaintiffs' jobs and was also the subject of one of the arbitrator's findings. The arbitrator found that the agreement to which plaintiffs refer applied to layoff policies and was not applicable where they were permanently terminated. This finding is now binding and final as between the parties, *see Amoco Oil Co. v. Oil, Chemical & Atomic Workers International Union, Local 7-1, Inc.*, 548 F.2d 1288, 1293-93 (7th Cir.), *cert. denied*, 431 U.S. 905 (1977); *Johnson v. Agar Products Co.*, No. 81 C 2983, slip op. at 6 (N.D. Ill. Oct. 29, 1981) (Getzendanner, J.). Therefore, we have no basis for concluding that plaintiffs had a property interest in their jobs as a result of this alleged agreement.

We do hold, however, that plaintiffs have stated a claim for deprivation of a constitutional liberty interest without due process of law. Plaintiffs' complaint sets forth that two weeks prior to their termination they were subjected to serious public allegations of malfeasance and criminal conduct by members and officers of the Chicago Transit Authority Board. As we held earlier in *Holly v. City of Naperville*, No. 82 C 6981, slip op. at 13 (N.D. Ill. July 8, 1983) (Grady, J.), "stigma to reputation, when found in conjunction with discharge . . . raises a constitutional liberty interest which may not be abridged without notice and a hearing sufficient to give the aggrieved party a chance to clear his name." *See also Colaizzi v. Walker*, 542 F.2d 969, 973 (7th Cir. 1976), *cert. denied*, 430 U.S. 960 (1977).

CONCLUSION

For the reasons stated above, we grant defendants' motion to dismiss Count I of the complaint and dismiss that portion of Count II of the complaint which seeks relief for deprivation of a property interest without due process. The sole remaining claim in this complaint is plaintiffs' claim alleging deprivation of a constitutional liberty interest without due process of law.

DATED: 30 AUG 1983

ENTER: /s/ JOHN F. GRADY
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TIMOTHY O'MAHONY, et al.,

Plaintiffs,

No. 82 C 5543 v.

THE CHICAGO TRANSIT AUTHORITY,

Defendant.

MEMORANDUM OPINION

Plaintiffs, formerly security guards employed by the Chicago Transit Authority ("CTA"), claim that their right to due process was violated when defendant CTA failed to give them a hearing after making stigmatizing statements in the course of their discharge.[1] The case is before us on defendant's motion for summary judgment. For the reasons given below, defendant's motion is granted.

FACTS

The CTA fired plaintiffs on September 29, 1981. The complaint states that the official reasons given to plaintiffs for their discharge were lack of funding and ineffective job performance. Complaint, ¶ VI. At the time of discharge, Mayor Jane Byrne was quoted in newspapers as complaining of "inadequate" security. Specifically, she blamed the CTA's security force for allowing "crime hazards and drug abuse on buses and trains, fraudulent misuse of transfers and widespread equipment theft." De-

fendant's Motion for Summary Judgment, Attachment # 27, *Fire CTA Cops: Bryne*, Chicago Sun-Times, September 29, 1981, at 1, col. 1.[2] Police Superintendent Richard Brzeczek was quoted as calling the force a "wasteful, ineffective system run by people who don't know what management control means." *Id.*, Attachment # 5, *Brzeczek Blasts CTA Security Force*, Chicago Tribune, October 4, 1981, at 3, col. 2.

DISCUSSION

The CTA claims that the above assertions allegedly made by Mayor Byrne and Police Superintendent Brzeczek were not stigmatizing, because the statements accused plaintiffs of incompetence, not dishonesty. Moreover, the CTA states that because the statements were directed toward the security force as a whole, and not toward particular individuals, the statements are in any event not actionable. We agree that the statements about which plaintiffs complain are not stigmatizing.

Under the Constitution, a public employee is entitled to procedures safeguarding his liberty interest. This interest encompasses "1) protection of his good name, reputation, honor and integrity and 2) his freedom to take advantage of other employment opportunities." *Hadley v. City of DuPage*, 715 F.2d 1238, 1244 (7th Cir. 1983), *cert. denied*, 104 S.Ct. 1000 (1984). Therefore, an employee is entitled to a hearing to clear his name if, in the course of discharging him, the government makes charges against the employee that "might seriously damage his standing and associations in his community." *Munson v. Friske*, No. 83-1446, slip op. at 13 (7th Cir. Jan. 29, 1985).

The Seventh Circuit has described statements coming within the ambit of an employee's liberty interest as charges of "immorality, dishonesty, alcoholism, disloyalty, Communism or subversive acts;" *id.* at 14, or charges of "dishonesty or other job-related moral turpitude." *Lawson v. Sheriff of Tippecanoe County, Indiana*, 725 F.2d 1136, 1138-39 (7th Cir. 1984). Liberty is not infringed "by a label

of incompetence or a failure to meet a specific level of management skills." *Munson*, slip op. at 14; *Hadley*, 715 F.2d at 1285; *Holly v. Naperville*, No. 82 C 6981, Memorandum Op. at 9-10 (N.D. Ill. Feb. 7, 1985) (Grady, J.).

All the comments attributed to government officials in the newspaper articles submitted by all parties accuse the security force as a whole of incompetence. Even plaintiffs have characterized the comments as "implying that [plaintiffs were] *either* dishonest *or* incompetent." Plaintiffs' Response for Motion of Summary Judgment at 1 (emphasis supplied). In none of these articles is an official quoted as accusing any member of the force of criminal acts; rather, officials allegedly accuse the force of failing to *curb* illegal conduct. *See infra* at 1, 6 n. 1. Therefore, following *Munson* and *Hadley*, the statements did not stigmatize the plaintiffs.

Plaintiffs argue that these articles "implied collusion" in criminal acts. Plaintiffs' Response at 1. We disagree, keeping in mind that in determining the merits of the motion for summary judgment, we must draw inferences from the evidence in the light most favorable to plaintiffs. In two articles submitted by plaintiffs, a city official is quoted as explicitly stating, "I'm not accusing anybody of stealing." Plaintiffs' Response, Attachment, *2 find mess of $1 bills at CTA counting house*, Chicago Sun-Times, July 15, 1981, at 1, col. 3, 26, col. 1; *id.*, *Dollar Surfeit Seizes Chicago Transit*, The New York Times, July 17, 1981, at A10, col. 2.

Judge Kocoras confronted this exact fact situation in *Arnold v. Byrne*, No. 82 C 5240, Transcript of Proceedings (N.D. Ill. May 25, 1984). There, non-union employees of the security force complained about the same statements that plaintiffs, union employees, complain of here. After reviewing some of the same newspaper articles as were submitted here, Judge Kocoras concluded that statements attributed to Mayor Byrne did not stigmatize:

> The Mayor essentially accused the CTA's Security Department of being incompetent: By their ineffective-

> ness they had failed to curb various types of criminal activity. This is, in my judgment, the only logical and fair conclusion and reasonable conclusion to be drawn from the summary of the Mayor's words set forth in . . . the two incorporated newspaper articles.

Arnold, Transcript at 3.

Plaintiffs attempt to distinguish their situation from that found in *Arnold* by claiming that the non-union employees in *Arnold* were investigators and "spotters" and did not actually participate in "the guard function." Plaintiffs' Response at 2. In other words, plaintiffs argue that statements made by city officials were leveled at persons other than the plaintiffs in *Arnold*. *See id.* Whether this claim is true is irrelevant. Judge Kocoras found that the statements, whomever they concerned, were not stigmatizing. We agree.[3] Because these statements do not accuse plaintiffs of dishonest or immoral conduct, plaintiffs' liberty interest was not affected, and they were not entitled to a due process hearing after their discharge.[4]

The court in *Arnold* asserted another reason for dismissing the employees' claim:

> The fact that Mayor Byrne may have wrongfully accused a large group also patently distinguishes the present case from all others cited by plaintiffs, in which one or two persons were singled out for public criticism. Any stigmatic effect her words might otherwise be construed to have had was diluted by the fact that they were issued broadly at a large and undifferentiated group.

Arnold, Transcript at 4. Here, plaintiffs admit that "it is true that no single person was actually charged." Plaintiffs' Response at 1.

We are not so sure that in no case could an individual assert his liberty interest when stigmatizing statements are made in reference to a group. It may be that statements could be so damaging that even taking into account a certain dilution due to their direction at a group, the

statements could seriously hinder an individual from finding employment. This, however, is not such a case. Any damage from statements made by city officials here was sufficiently diluted so as not to implicate an individual plaintiff's liberty interest.

CONCLUSION

For the reasons given above, we find that the statements about which plaintiffs complain were not stigmatizing and did not implicate plaintiffs' liberty interest. Therefore, defendant's motion for summary judgment is granted, and plaintiffs' action is dismissed.[5]

DATED: MAR 12, 1985

ENTER: /s/ JOHN F. GRADY
United States District Judge

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[1] Plaintiffs' original complaint also included claims based on 28 U.S.C. § 1331(a), 49 U.S.C. § 13(c), and plaintiffs' property interest in employment. These claims were dismissed, leaving plaintiffs' liberty interest claim, discussed *infra*. O'Mahoney v. The Chicago Transit Authority, No. 82 C 5543 (N.D.Ill. Aug. 30, 1983) (Grady, J.).

[2] *See also* Defendant's Motion for Summary Judgment, Attachment # 1, *CTA union says Byrne slandered it, vows suit*, Chicago Tribune, Sept. 29, 1981, at 1, 18 (Byrne claims security force "had not curbed" sale of drugs, illegal sale of transfers and theft); *id.*, Attachment # 3, *CTA votes down rehiring of guards*, Chicago Sun-Times, Oct. 20, 1981 (Byrne "angrily ordered the firings, saying the workers were incompetent"); Plaintiffs' Response, Attachment, *Barnes asks bank to count CTA money*, Chicago Tribune, July 16, 1981, at 5, col. 1 (director of Byrne's Office of Municipal investigation claims security "lax;"); *id.*, *2 find mess of $1 bills at CTA counting house*, Chicago Sun-Times, July 15, 1981, at 1, col. 3, 26 col. 1 (director complains of "serious lack of security").

[3] Plaintiffs have asserted that after their discharge numerous acquaintances believed that they had been fired for theft and dishonesty, and that their children and wives were harassed by similar comments. Plaintiffs' Response, "Affidavits" (These statements, purporting to be affidavits, do not appear to have been

sworn to in front of an officer having authority to administer oaths).

The issue here is not whether the public inferred from news articles that plaintiffs committed dishonest acts. Rather, the issue is whether a reasonable person could construe *from statements made by government officials* that plaintiffs committed such acts. Comments attributed to city officials have been cited, *supra* at 1, 6 n. 1. We make our inferences from those comments only. Even making inferences in the light most favorable to the plaintiffs, we agree with Judge Kocoras and cannot conclude that a reasonable person could believe from these comments that the government was accusing plaintiffs of dishonest acts.

[4] In their response, plaintiffs also complain about a statement published in the Chicago Sun-Times. In reference to the statement, plaintiffs argue:

> It is clear that the defendant . . . engaged in a deliberate and premediated campaign to discredit and defame the security department. . . . The comment taken out of context in quoting Timothy O'Mahony is a small example of how [defendant] is trying to manipulate the facts. The remark was clearly intended to be fascitious [sic] with emphasis on the word "supposedly." The volume and nature of the comments clearly indicate that [defendant] had a clear and deliberate plan of defamation and termination of the security function.

Plaintiffs' Response at 2.

We assume that the statement to which the plaintiffs refer is a letter to the editor of the Sun-Times purportedly signed by plaintiff O'Mahony. *Letters: Look who's talking about CTA security now,* Chicago Sun-Times, Feb. 12, 1982. This letter reads:

> Yet it was Byrne who only four months ago fired the supposedly incompetent CTA security department, charging that it had let crime get out of hand.

This statement does not implicate plaintiffs' liberty interest for numerous reasons. First, it does not accuse the plaintiffs of dishonest conduct. Second, the letter supposedly was written by a plaintiff, not a city official. Third, if any alteration or fabrication occurred in the publication of this letter, this manipulation must have been perpetrated by the Sun-Times, not the government. There is no evidence, and the plaintiffs do not claim, that any city official participated in publication of the letter. Clearly, the plaintiffs cannot complain about statements attributed by a newspaper to a plaintiff, especially when the statements are non-stigmatizing.

[5] We had granted defendant leave to file a reply brief, but we were able to decide the motion without it.

APPENDIX D

[Chicago Sun-Times — Sept. 29, 1981 — p. 1]

Fire CTA cops: Byrne

By Harry Golden Jr.

Mayor Byrne Monday moved to fire the entire 106-member security force of the CTA and turn its job over to the Police Department.

An angry Byrne revealed that she wants the CTA to scrap the force, which she blamed for crime hazards and drug abuse on buses and trains, fraudulent misuse of transfers and widespread equipment theft at CTA shops.

Firing of the force was expected to be carried out Tuesday by an administrative order from CTA Executive Director Theodore Schuster.

"Senior citizens are afraid to ride the CTA and that's terrible," Byrne told City Hall reporters. "I hope the rest of the units understand this is how it's going to be throughout the CTA. The heyday on the CTA is over. . . . We're housecleaning and

Turn to Page 8

[Chicago Sun-Times, Tuesday, Sept. 29, 1981 — p. 8]

Byrne moves to dismantle CTA's security force

Continued from Page 1

there's going to be more."

Byrne said her decision was made in a meeting with Schuster and Police Supt. Richard J. Brzeczek.

Also present and concurring, she said, were James A. Maurer, director of the Office of Municipal Investigations; Michael Cardilli, Schuster's deputy; Howard C. Medley, a CTA board member, and Michael G. Ferreri of the CTA consulting firm of Simpson & Curtin.

ASKED ABOUT HER ORDERS to Brzeczek, Byrne said, "I want him to clean it up, period. I want people to be able to ride in comfort and not feel threatened."

For many years, the CTA security force has been primarily responsible for guarding CTA garages, shops, counting houses and other installations. Only rarely have the guards been called upon to patrol CTA routes. Instead, the Police Department has maintained a mass transit unit.

Byrne mentioned the plan for disbanding the force as she spoke Monday afternoon to residents of Lawrence House, a retirement hotel at 1020 W. Lawrence. She then spoke by telephone to reporters in the City Hall press room.

She said she had arranged for a special session of the CTA board at 3 p.m. Tuesday to act on her recommendation.

LATER, HOWEVER, A CTA spokesman said the meeting was canceled because research showed Byrne's will can be carried out by an executive order from Schuster, without board action.

City police took over some security force functions Monday night, said CTA Sgt. Frederick E. Barrett, who was working what may be one of his last night shifts for the CTA. He said CTA security employees at bus depots were pulled off their assignments at 6 p.m. and replaced by 12 city policemen.

Byrne said she had received reports of recent thefts of 26 tires, a quantity of batteries and some fire extinguishers from CTA shops. At the CTA's counting house, she said dollar bills collected as fares are scattered about amid lax security.

Moreover, she said, she's been informed that marijuana is routinely sold at various CTA stations. She asserted she will stop "the pushing of drugs, the selling of drugs and the using of drugs on the CTA."

THERE ALSO HAS BEEN flagrant abuse of transfers, she said, explaining that riders who don't need connecting transportation frequently buy the 10-cent transfer coupon and then resell it.

Byrne's charges were called "very unfair" by Timothy O'Mahony, a veteran member of the security force. "I have to say this is political," he said. "Every politician needs a scapegoat."

Most of the targeted employees are members of Amalgamated Transit Workers Union Local 241, the same union that represents bus drivers. Byrne said union membership will be no hindrance to dismissal.

The 65 security employees who are union members wear uniforms and are called security officers. The others, who wear civilian clothes, are called investigators. A CTA spokesman said members of the force are officers of the law with powers of arrest.

SOURCES WITHIN THE CTA estimated the employees' annual salaries average $22,500, which would indicate a payroll of $2.4 million.

Byrne said police would promptly take over all the force's functions, but watchman duties at outlying installations would eventually be turned over to a private security service.

For the rest of this year, Byrne said, the realignment of security will result in a saving of $350,000. Apparently, the figure represented a net difference in costs of the existing service compared to service by police.

APPENDIX E

[Chicago Tribune — Oct. 4, 1981 — Sec. 1, p. 3]

'Wasteful, ineffective'

Brzeczek blasts CTA security force

By Lynn Emmerman
and David Young

AN AUDIT OF the recently disbanded Chicago Transit Authority security force has shown it to be a "wasteful, ineffective system run by people who don't know what management control means," Chicago Police Supt. Richard Brzeczek said last week.

In an interview with The Tribune, Brzeczek discussed the failings of CTA security and outlined his plan to clean up the transit system.

"We have to start from scratch before we can even begin to determine how bad the employe theft problem is," Brzeczek said. He said CTA security had virtually no procedures to check up on suspicious "L" train fare collectors and bus drivers, and had no plan to monitor the distribution of the CTA's consumable supplies like gasoline and transfers.

"We have good reasons to believe that employes have been skimming fare monies as well as stealing transfers and other supplies and reselling them on the street," Brzeczek said.

THE AUDIT disclosed other problems that plagued the transit security force, including "misassignments of officers." This resulted in inadequate security protection in crucial areas such as CTA fare-counting headquarters, which handles an average of $700,000 a day, and heavy security at other, less valuable CTA properties such as storage garages, he said.

The police department began an ongoing audit of CTA security Monday after Mayor Byrne moved to eliminate the 106-member transit security force and transfer its responsibilities to the police department.

Brzeczek said he welcomed the extra responsibilities but that he expects the CTA to pay for the police-provided security. He said the CTA should reimburse the police department much in the same way that the airlines pay for the flight screening officers assigned to O'Hare International Airport.

THE YEARLY cost for police-provided security at O'Hare is $1.5 million. The cost for transit security and the number of officers to be assigned to the new transit unit has not yet been determined, he said.

The police department's new responsibilities, formerly those of the CTA security force, include guarding CTA buildings, protecting money counting islands and the central counting facility, responding to transit traffic accidents, and riding the system to check for problems.

Protection of CTA riders always has been the responsibility of the police mass transit unit. Police sources said that mass transit officers who allegedly neglect their duties are currently under investigation as part of the department's plan to clean up the transit system.

ACCORDING TO Brzeczek, other points of the plan include:

- The installation of surveillance cameras in 10 "L" stations on the Howard-Englewood line by May, 1982. The cameras, which are equipped with two-way speakers and push button phones, are monitored by police at communications headquarters. They currently are operating in four South Side el stations as part of a pilot program. The CTA board voted to install the additional cameras last year.
- A streamlined emergency communications system for bus drivers and "L" train motormen. Their emergency calls for police aid now must go through four CTA controllers before police are notified. The new system will locate the vehicle in trouble and notify the proper police

communications dispatcher in two simple steps, cutting police response time in half.

- Hiring bonded CTA workers who will handle fare box money and free security officers for more agressive patrol activities.
- Establishing a procedure to make transit employes accountable for their use of CTA supplies. Brzeczek said that this should stop the "hot transfers that are flooding the street."

POLICE AND the Office of Municipal Investigations are investigating complaints that transit employees are running gambling operations and selling and using narcotics on CTA property. In several cases, the complaints appear substantial and could result in indictments, said OMI Director James Maurer.

One high-ranking CTA official, who asked not to be identified, voiced skepticism about Brzeczek's plan.

"I don't see how this changeover will help the CTA. We have enough financial troubles as it is without having to pay the Chicago police for a new transit security unit that's no more effective than the old one.

"The police department has had the unit only five days and already they've got trouble," he said, referring to reported vandalism of eight CTA bus fare boxes in the Lawndale Depot late Thursday and early Friday. The incident was the first reported property crime against CTA property since the police took over transit security.

Brzeczek said the police were well on their way to solving the fare box breakins and added, "There's nothing wrong with expecting payment for our services to the CTA. They've always budgeted money for security. We're one goverment agency serving another. I think asking for payment is a reasonable request."

Supreme Court, U.S.
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No. 85-1363

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

TIMOTHY V. O'MAHONY,

Petitioner,

v.

CHICAGO TRANSIT AUTHORITY,
a municipal corporation,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether there is a split amongst the federal courts of appeals as to the appropriate determination of the stigmatizing character of charges of incompetence as it relates to a public employee's Fourteenth Amendment liberty interest or whether such a determination is a finding of fact that is not a proper basis for granting certiorari.
2. Whether petitioner has a Fourteenth Amendment property interest in continued employment where state statutes have granted the employer the right to abolish petitioner's position at any time, in its sole discretion.
3. Whether an exception should be recognized to the prohibition against an employee bringing a cause of action in federal court under the Urban Mass Transportation Act, 49 U.S.C. Section 13(c), to enforce a § 13(c) agreement, when it is alleged by the employee that his union failed to provide adequate representation.

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In The

Supreme Court of the United States

October Term, 1985

TIMOTHY V. O'MAHONY,

Petitioner,

v.

CHICAGO TRANSIT AUTHORITY,
a municipal corporation,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Petitioner's "Statement of the Case" is overly argumentative and inaccurate. It fails to include essential details regarding the decision below and other background information. Accordingly, Respondent Chicago Transit Authority provides the following statement.

A. Factual Background

The Chicago Transit Authority (hereinafter "CTA") is a municipal corporation formed and operated under the Illinois Metropolitan Transit Authority Act (Ill. Rev. Stat. Ch. 111⅔, § 301 *et seq.* (1983 and Supp. 1984) to provide public transportation in and around the City of Chicago. Prior to September, 1981, the petitioner was employed by the CTA as part of an internal security force, numbering approximately 107 employees.

At all times relevant, the CTA was signatory to a collective bargaining agreement with Local 241 of the Amalgamated Transit Union (hereinafter "Local 241" or "the Union") effective December 1, 1979 through November 30, 1982. That bargaining agreement set forth the terms and conditions of employment applicable to unionized employees of the CTA's security force department, including petitioner.[1] The bargaining agreement contained, *inter alia*, a grievance arbitration procedure that included a provision for final and binding arbitration as to "the construction and application of the specific terms of this Agreement and/or to the matters referred . . . for arbitration."

On September 28, 1981, the CTA's Executive Director issued an executive order which provided, effective that date, that "The Chicago Police Department has assumed all security functions for the Chicago Transit Authority." On September 29, 1981, the security department was discontinued and the employees were permanently discharged. Discharge notices issued to the security department em-

[1] Of the total 107 employees, approximately 59 were included in the bargaining unit represented by Local 241. The remaining security force employees were excluded from that unit by virtue of supervisory duties.

ployees recited two reasons for termination of the security department: lack of funds and ineffectiveness of the department.

On September 29, 1981, the Union filed a grievance asserting that the CTA's discontinuance of the security department violated the collective bargaining agreement. The parties submitted the grievance to arbitration. Hearings covered 12 days in October, November, and December, 1981. The Union asserted at the arbitration hearing that the termination of the security department was an act of subcontracting which violated the bargaining agreement. The Union also asserted that the CTA's actions violated an alleged letter agreement between the union and the CTA Chairman which stated there would be no layoffs for the term of the agreement for certain full-time employees, depending on their length of seniority and continuous service.

On April 30, 1982, the arbitrator issued an award dismissing the Union's grievance in its entirety. In pertinent part, the arbitrator ruled that the CTA's termination of the security department was justified by economic considerations, was implemented in good faith, and did not violate any provision of the bargaining agreement. In addition, the arbitrator ruled that the CTA Chairman's letter governing layoffs was inapplicable to the CTA's permanent discontinuance of the security department.

B. Proceedings Below

On September 8, 1982, the petitioner and three other named plaintiffs filed a complaint in federal district court on behalf of "members of the class of unionized security personnel of the Chicago Transit Authority" challenging the legality of their discharge from employment by the CTA.

Count I of the complaint alleged that the security department was discharged in violation of the terms of an applicable labor protective agreement negotiated pursuant to § 13(c) of the Urban Mass Transportation Act (UMTA), 49 U.S.C. § 13(c) between the CTA and Local 241.

Count II of the complaint alleged that the security force was discharged without due process of law in violation of a constitutional property interest in continued employment. Under the allegations of the complaint, a continued right to public employment was created by the terms of the applicable collective bargaining agreement and by the terms of the letter from the CTA Chairman to Local 241 regarding layoff of employees.

In addition, Count II alleged that the security force was discharged without due process of law in violation of a constitutional liberty interest. According to the complaint, the security force employees were subjected to public accusations of malfeasance and criminal conduct by then Mayor Jane Byrne and other city officials at the time of their discharge.

On August 30, 1983, the district court issued an opinion granting, in part, the CTA's motion to dismiss the complaint (B-1).[2] The court dismissed Count I on the grounds of lack of jurisdiction based on this Court's decision in *Jackson Transit Authority v. Local Division 1285, Amalgamated Transit Union*, 457 U.S. 15 (1982). The court held that the *Jackson* decision made it clear that § 13(c) does not create federal causes of action for breaches of 13(c) agreements or underlying collective bargaining agreements. The lower court noted that the *Jack-*

[2] References to "A-____" through "E-____" are to the appendix included in petitioner's Petition For Writ of Certiorari.

son Court held that the legislative history indicated that Congress intended those contracts to be governed by State law applied in State courts.

With respect to Count II, the court dismissed plaintiffs' claims based on deprivation of property interest without due process for two reasons. First, the court found that state statutory law creates no property right to continued employment where a department is abolished for economic reasons as opposed to termination for cause. The court held that the CTA exercised its statutory right to abolish the security force (B-2).

In addition, the court rejected the employees' contention that a continued right to public employment was created under the terms of the letter agreement dated June 20, 1980, between the CTA Chairman and Local 241. The district court, relying on collateral estoppel, stated that this matter was raised in the arbitration proceeding and that the arbitrator specifically found that the letter referred to layoffs and had no application to the abolishment of the department. The court held the finding of the arbitrator to be binding and final between the parties (B-3).

The court declined to dismiss the remaining portion of Count II regarding the deprivation of a constitutional liberty interest.

In February, 1985, the CTA filed a motion for summary judgment regarding the remaining portions of Count II, along with supporting evidence. The plaintiffs filed a response in opposition, along with newspaper articles and other documents, in support of their claim that they were deprived of their liberty interest.

Thereafter, on March 12, 1985, the district court entered its order granting CTA's motion for summary judgment

with respect to the remaining portion of Count II of the Complaint and dismissed the action (C-1). Viewing the evidence in the light most favorable to the plaintiffs, the court held that the comments attributed to city officials in newspaper articles about which the plaintiffs complained were not stigmatizing and did not implicate the plaintiffs' liberty interests (C-2). The court found that the published comments accused the security force, as a whole, of incompetence and did not seriously damage the individual plaintiffs' standing and associations in the community. Also, since the comments of incompetence were directed towards all 107 security force employees, the court stated that in this case any possible damage was sufficiently diluted so as not to implicate an individual plaintiff's liberty interest. (C-4, 5)

Petitioner and the three other named plaintiffs appealed both decisions to the United States Court of Appeals for the Seventh Circuit. After the appeal was fully briefed and argued, the court issued its order, on November 15, 1985, affirming the district court's judgment for the reasons stated in that court's two opinions (A-1).

On February 13, 1986 petitioner Timothy V. O'Mahony filed with this Court a *pro se* petition for a writ of certiorari. The three other named plaintiffs in the proceedings below were not included in the petition.

SUMMARY OF REASONS FOR DENYING PETITION

Petitioner asserts that the decision below is in conflict with the decisions of other courts of appeals regarding the appropriate determination of the stigmatizing character of charges of incompetence raised at the time of petitioner's discharge. Petitioner mischaracterizes the decision below as one in which the court mechanically labeled and excluded charges of incompetence from its definition of stigma, without regard to the overall facts. However, in the present case, the court thoroughly reviewed the evidence before it and concluded that there was no stigma involved in the charges of incompetence made at the time the security department was abolished and that a reasonable person could not conclude that the security department employees were accused of any criminal activity.

The conflict claimed by petitioner is mere fabrication. The factual circumstances in each of the cases claimed by petitioner to be in conflict with the decision below are so different that they preclude actual comparisons. Instead, it is obvious that the present petition is merely an attempt to have this Court review the findings of fact made by the court below. This is not a proper basis for the granting of certiorari.

Petitioner also claims that he has a protected property interest in his employment that was violated by his discharge. However, the court below properly dismissed this claim on the basis that governing Illinois statutes provide the CTA with the authority to abolish petitioner's position at any time and thus, petitioner had no property interest in his job.

To support this argument, petitioner simply refers to Ill. Rev. Stat. Ch. 111⅔, § 328, which provides that CTA employees may be discharged only for cause. However, the court below found that since the department in which petitioner worked was abolished by the CTA, the just cause provision did not apply. Petitioner has not provided any authority for his argument other than the statute, itself, which the court below found was not applicable.

Finally, petitioner asserts that he has a right to bring an action in federal court under the Urban Mass Transportation Act (UMTA), 49 U.S.C. Section 13(c), to enforce an agreement between the CTA and Local 241. The court below dismissed petitioner's claim on the basis that *Jackson Transit Authority v. Local Division 1285, Amalgamated Transit Union, AFL-CIO-CLC*, 457 U.S. 15 (1982), held that § 13(c) of UMTA does not create a federal cause of action to enforce 13(c) agreements and that Congress intended those contracts to be enforced pursuant to state law in state courts.

However, petitioner claims that special circumstances present in this case (*i.e.*, his union's failure to fairly represent him and the unavailability of federal administrative remedies) require this Court to recognize a right for petitioner to bring this action in federal court. Yet, petitioner provides no authority for this argument other than a footnote, in *Jackson Transit Authority*, that clearly has no application. Also, the court has no jurisdiction to hear petitioner's claim that his union failed to represent him. Accordingly, there is no basis for this Court to grant certiorari.

ARGUMENT

I.

THERE IS NO CONFLICT BETWEEN THE DECISION BELOW AND OTHER FEDERAL COURTS OF APPEALS THAT REQUIRES THIS COURT'S REVIEW.

Petitioner contends that this Court should review the Seventh Circuit's holding because it supposedly conflicts with the decisions of other courts regarding the stigmatizing character of charges of incompetence raised at the time of petitioner's discharge. Petitioner attempts to manufacture a conflict by mischaracterizing the decision below as one in which the court mechanically excluded charges of incompetence from its definition of stigma and by misconstruing the allegedly "conflicting" decisions. No such conflict exists. This petition merely seeks a review of the evidence and findings of fact below. This is clearly not a basis for granting certiorari.

The decision of the district court, affirmed by the Seventh Circuit, held that petitioner's due process rights were not violated in that the statements made to the press at the time of petitioner's discharge were not stigmatizing and did not implicate petitioner's liberty interest. In its decision, the court recognized that a public employee is entitled to protect his liberty interest through a hearing to clear his name, if, in the course of discharging him, the government makes charges against the employee that "might seriously damage his standing and associations in his community." *Board of Regents v. Roth*, 408 U.S. 564, 573 (1972).

In granting the CTA's motion for summary judgment, the court reviewed the articles and comments about which

petitioner complained and found that they accused the security force, as a whole, of incompetence and failure to curb various types of criminal conduct (C-3). The court engaged in a thorough analysis of all the facts, in the light most favorable to petitioner, and rejected petitioner's claim that the articles "implied collusion" in criminal acts and were thus stigmatizing. Instead, the court found that a city official explicitly stated that the security force was not being accused of stealing and that a reasonable person could not construe the statements as accusing the plaintiffs of dishonest acts (C-3; C-5, footnote 3). Accordingly, the court held that the comments were not stigmatizing. In addition, the court stated that the comments were further diluted by the fact that they were broadly directed towards the entire security department (C-4, C-5).

In his petition, petitioner admits that this Court has not addressed a case similar to the situation presented here. However, he asserts that the decision below is in conflict with decisions of other circuits. This argument is entirely without merit. There is no conflict or split of authority between the circuits. The decisions cited by petitioner to support his argument are so factually dissimilar to the present situation that they preclude any meaningful comparison.

In *Quinn v. Syracuse Model Neighborhood Corp.*, 613 F.2d 438 (2d Cir. 1980), a director of an urban redevelopment organization was discharged by the organization's board after the city's Mayor publicly implicated the director as being responsible for missing public funds. The court of appeals reversed the lower court's order granting summary judgment in favor of defendant and stated that a material fact issue existed as to whether plaintiff had been stigmatized by the defendant's public comments.

The court found that at the time of plaintiff's discharge, public comments were made concerning the criminal investigation surrounding the missing public funds, that there were reports that the Mayor had called for plaintiff's dismissal but that his resignation was not accepted by the Board because plaintiff was cooperating with the criminal investigation and that the Mayor later reported plaintiff would be fired for failing to cooperate in the criminal investigation. The court found that under these circumstances, summary judgment was not appropriate because the articles suggested that plaintiff was responsible for the missing funds and that it was certainly arguable that plaintiff was publicly charged with illegal and immoral conduct.

It is difficult to perceive how petitioner could claim that the court in *Quinn* was "confronted with a fact pattern with identity to petitioner's." In the present case, 107 security department employees were discharged when their department was abolished. The public comments surrounding their discharge were that the department was ineffective and the employees were incompetent. These comments do not come close to the accusations made against plaintiff in *Quinn*, where he was reported to be the subject of a criminal investigation regarding missing agency funds and was attacked by the Mayor as being responsible for the missing money.

Here, as in *Quinn*, the court reviewed the comments complained of by petitioner in the light most favorable to petitioner. However, unlike *Quinn*, the facts in the present situation did not warrant a finding that the comments made about the entire department were stigmatizing to petitioner or other individuals.

In *Cox v. Northern Virginia Transportation Commission*, 551 F.2d 555 (4th Cir. 1976), the court affirmed a lower court's decision that a former deputy administrator of a regional transportation agency, who was discharged amid public allegations that she was directly responsible for serious financial wrongdoing at the agency, was deprived of her liberty interest without due process. At the time of plaintiff's discharge, public statements by the agency's commissioners tied plaintiff's discharge directly with the results of an investigation of a financial scandal in the department she headed. The court found that plaintiff was entitled to a hearing to clear her name and was wrongfully denied this right. In affirming the lower court's decision, the court in *Cox* stated that "[t]he fourteenth amendment's guarantee of liberty 'to engage in any of the common occupations of life' is offended when the state denies a hearing to a discharged employee whom it has accused publicly of dishonesty or immorality." 551 F.2d at 558.

Contrary to petitioner's assertion, there is no conflict between the decision in *Cox* and the present case. In *Cox*, the facts warranted a conclusion that plaintiff was publicly charged with dishonesty or theft at the time of her discharge. Here, the facts before the district court demonstrated nothing more than that the security guards were publicly accused of being ineffective and incompetent at the time the department was discontinued. The court below made a specific finding of fact that no public accusations were made which could be construed that the security guards were accused of any criminal activity. In the absence of such a finding, there is no conflict here with the Fourth Circuit's decision in *Cox*.

In the last case that petitioner claims conflicts with the decision below, *McKnight v. Southeastern Pennsylvania*

Transportation Authority, 583 F.2d 1229 (3rd Cir. 1978), a special investigator for a transit authority's security force was discharged for being intoxicated while at work and failing to perform designated duties. The discharged employee asserted in his complaint that these charges were communicated to others, that he was not given an opportunity to refute the allegations and that he was unable to obtain other employment due to the public comments.

The district court dismissed plaintiff's complaint on the basis that the public accusations about which he complained were not sufficiently stigmatizing and plaintiff appealed. The appellate court vacated the order of dismissal and held that the issue of whether the public charge of intoxication was sufficiently stigmatizing to constitute an infringement of liberty was a question of fact that could not be appropriately determined through a motion to dismiss. The court found that the lower court's decision was a premature finding of fact since there was no evidence before the court and that the complaint sufficiently set forth the elements of a cause of action.

It is painfully obvious that there is no conflict between the Third Circuit's decision in *McKnight* and the present case. Here, the district court refused to dismiss petitioner's complaint on the basis that his complaint stated a cause of action for deprivation of his liberty interest. However, the CTA subsequently moved for summary judgment and evidence was submitted to the court by both parties. The court reviewed the evidence in the light most favorable to petitioner and found that the comments complained of were not stigmatizing. The court decided this question of fact by reviewing the newspaper articles about which petitioner complained and found that a reasonable person could not construe the statements made by govern-

mental officials as statements that plaintiffs had been accused of any dishonest acts. The decisions in *McKnight* and the present case are totally consistent.

Accordingly, there can be no question that there is no split among the circuits that requires review by this Court. Petitioner's request for certiorari is obviously being sought merely to have this Court review the factual determination by the court below. The petition must be denied for that reason.

This Court stated in *United States v. Johnston*, 268 U.S. 220 (1925), "We do not grant certiorari to review evidence and discuss specific facts." 268 U.S. at 227. Here, petitioner is simply seeking this Court to review the findings of fact made by the district court, and affirmed by the court of appeals, that the statements about which petitioner complained were not stigmatizing. This is readily apparent from petitioner's argument, at pages 12 and 13, where he states:

> Equally plain is their need to examine the totality of facts attendant such a discharge to determine whether stigma has, in fact, been effected. Had such a review been performed instantly, where the totality of facts surrounding incompetence involved highly charged allegations and insinuations of theft and narcotics violations; it is respectfully submitted, that a meritorious infringement of liberty, would have been found.

The court below reviewed all of the facts surrounding petitioner's discharge and found that the statements were not stigmatizing. Petitioner simply seeks this Court to conduct another review.

This Court has often held that "a court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concur-

rent findings of fact by two courts below in the absence of a very obvious and exceptional show of error." *Graver Manufacturing Co. v. Linde Co.*, 336 U.S. 271, 275 (1949). Petitioner has failed to show any error in the court's decision below, let alone an "obvious and exceptional" one. Accordingly, petitioner's request to have the findings of fact reviewed by this Court must be denied.

Similarly, petitioner's argument that two other circuits have adopted the Seventh Circuit's allegedly conflicting position is without merit. Once again, the cases cited by petitioner involve such divergent factual situations that no realistic comparative analysis is possible.

In *Debose v. United States Department of Agriculture*, 700 F.2d 1262 (9th Cir. 1983), a government agronomist was discharged for substandard performance and failure to improve after repeated warnings. The court reviewed the findings of the Merit Systems Protection Board upholding plaintiff's termination and found that plaintiff's liberty interest in future employment was not abridged. The court stated that there was no stigma attached to plaintiff because there was no public disclosure of the reasons for his discharge, citing *Bishop v. Wood*, 426 U.S. 341 (1976). Obviously, the lack of disclosure in *Debose* precludes any meaningful comparison with the other decisions.

Finally, in *Mazaleski v. Treusdell*, 562 F.2d 701 (D.C. Cir. 1977), the court did not, as alleged by petitioner, "delimit stigma to charges of dishonesty" and immoral conduct. Instead, the court simply discussed the types of cases in which other courts had determined whether the disclosure of the reasons for the employee's discharge affected the employee's liberty interest. The court concluded that on the basis of the facts presented for its review,

the plaintiff was not stigmatized by the charges of incompetence at the time of his discharge. The court did not limit its definition to specific types of situations but, instead, based its decision on the particular facts before it.

Thus, it is clear that there is no conflict between the decision below and the decisions of other courts cited by petitioner. Any difference in the opinions are due to the different fact situations in each. This is certainly not a basis for this Court to grant certiorari to review the decision below.

II.

THE COURT OF APPEALS CORRECTLY FOUND THAT PETITIONER DID NOT HAVE A PROPERTY INTEREST IN HIS EMPLOYMENT.

Petitioner asserts that he had a protected property interest in his employment with the CTA which was violated by his discharge. This argument completely ignores the clear language in the relevant state statutes and misconstrues their application to the present set of facts.

The district court, affirmed by the Seventh Circuit, dismissed petitioner's claim that he had a protected property interest in his job by virtue of the Metropolitan Transit Authority Act, Ill. Rev. Stat. Ch. 111⅔, § 328, which provides that CTA employees may be discharged only for cause. The court specifically found that the just cause provision in § 328 did not govern the present situation because the CTA totally eliminated petitioner's job position. The court held that under Ill. Rev. Stat. Ch. 111⅔, § 327, the CTA has the authority to maintain a police force "from time to time as it may find necessary." The court concluded that the CTA properly exercised its statutory right to abolish the security force and in doing so, petitioner did not have a property interest in his job.

Petitioner's argument completely ignores the court's finding of fact that the just cause provision in § 328 does not apply to the instant matter. Instead, petitioner simply states in his argument that "there can be no dispute that petitioner received a protected property interest in his employment by virtue of" the just cause provision in § 328. Contrary to petitioner's misconceived assertions, this matter is not undisputed. Specifically, the court below found that petitioner has no property interest and that that section of the Act does not apply. Petitioner offers nothing to support his erroneous statement other than the statement itself.

In his argument, petitioner also admits that "[i]t is not disputed that the CTA had the right to establish or abolish any security force it may choose to create." However, petitioner incorrectly claims that he enjoyed a property interest to continued employment in any other positions with the CTA for which he could qualify pursuant to the provision in § 328. That section provides:

> The Board may abolish any office or reduce the force of employees for lack of work or lack of funds, but in so doing the officer or employee with the shortest service record in the class and grade to which he or she belongs shall be first released from service and shall be reinstated in order of seniority when additional force of employees is required. (Ill. Rev. Stat., Ch. 111⅔, § 328)

Petitioner's reliance on this provision is unfounded. To have a property interest in a benefit, "a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Board of Regents v. Roth, supra,* 408 U.S. 577.

In this case the Metropolitan Transit Authority Act itself removes any legitimate claim of entitlement to continued employment in the event of a reduction in force. The Act provides two clear exceptions to a CTA employee's expectation that his employment is terminable only for cause: permanent discontinuance of a position for lack of funds or permanent discontinuance of a position for lack of work.

In either event, an employee's expectation is limited to termination with a *contingent* right of reinstatement in the event a future position is established. The cause is not within the employee's control and, by statute, is removed from any right of challenge under procedures applicable to discharges for cause. Thus, as a matter of law, employees terminated as a result of a reduction in force retain no legitimate expectations of continued employment under the Illinois Act. *See Lacy v. Dayton Board of Education*, 550 F. Supp. 835 (S.D. Ohio 1982) (statutory right to termination by order of seniority under Ohio reduction in force statute was insufficient to create a property interest subject to due process protection); *accord, Riggs v. Commonwealth of Kentucky*, 734 F.2d 262 (6th Cir.), *cert. denied*, 105 S. Ct. 184 (1984) (Kentucky statute permitting "lay-offs by reasons of lack of funds or work, or abolishment of a position" created no property right subject to due process protection).

The court below correctly determined that petitioner has no property interest in his job by virtue of the applicable State law. Petitioner had not provided any authority or convincing argument that compels this Court to overturn that decision.

III.

THE COURT OF APPEALS CORRECTLY DETERMINED THAT PETITIONER HAS NO RIGHT TO SUE UNDER SECTION 13(c) OF THE URBAN MASS TRANSPORTATION ACT OF 1964, AS AMENDED [49 U.S.C. SECTION 13(c)].

The district court, affirmed by the court of appeals, correctly held that this Court's decision in *Jackson Transit Authority v. Local Division 1285, Amalgamated Transit Union, AFL-CIO-CLC*, 457 U.S. 15 (1982), clearly established that § 13(c) of the Urban Mass Transportation Act (UMTA), 49 U.S.C. Section 13(c), does not create federal causes of action for breaches of a § 13(c) agreement between UMTA recipients and transit unions. The court noted that the *Jackson* Court held that the legislative history indicates that Congress intended those contracts to be governed by state law applied in state courts. Accordingly, Count I of petitioner's complaint was dismissed due to the court's lack of jurisdiction.

Apparently, petitioner does not challenge the correctness of the court's application of *Jackson Transit Authority* to the present situation. Instead, petitioner appears to be arguing that special circumstances require this Court to virtually overrule *Jackson Transit Authority* and recognize petitioner's right to sue in federal court for alleged violations of the § 13(c) agreement.

The special circumstances claimed by petitioner are that his collective bargaining representative, Local 241, failed to pursue his remedies on his behalf and that there is no federal administrative remedy available to petitioner. This argument is frivolous and lacking in any support.

Petitioner offers no statutory basis or authority to support federal jurisdiction over his claim that his union failed

to adequately represent his interests. Jurisdiction of the federal courts to review an arbitration award or to entertain suits by individual employees against their bargaining representative for breach of a duty of fair representation arises by virtue of § 301 of the Labor Management Relations Act (29 U.S.C. § 185).[3] Under a long standing statutory exclusion, local governmental entities and their employees are excluded from coverage under § 301.[4] Accordingly, no federal jurisdiction exists to review petitioner's assertion that Local 241 "never took any action to negotiate, mediate or arbitrate the petitioner's rights" under the § 13(c) Agreement.

Also, petitioner's argument that his case warrants special consideration because there are no federal administrative remedies available, is not persuasive. Since Congress intended 13(c) agreements to be enforced by state law in state courts, it certainly would not be expected to provide a federal administrative remedy.

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[3] *See, e.g., the Steelworkers Trilogy* (review of arbitration awards): *United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers v. Warrior and Gulf Navigation Co.*, 363 U.S. 574 (1960). *See also Smith v. Evening News Ass'n*, 371 U.S. 195, 199-200 (1962); *Vaca v. Sipes*, 386 U.S. 171 (1967) (duty of fair representation).

[4] Section 301(a) provides: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act . . . may be brought in any district court of the United States having jurisdiction of the parties."

Section 2 of the Act provides that the term "employer" shall not include "any State or political subdivision thereof" (29 U.S.C. § 152(2)). Section 2 also provides that the term "employee" shall not include "any individual employed . . . by any other person who is not an employer as herein defined" (29 U.S.C. § 152(3)).

In claiming that special circumstances require this Court to virtually overturn its decision in *Jackson Transit Authority*, the only authority cited by petitioner is *Jackson Transit Authority* itself, at footnote 13. There, the Court stated, in part:

> While we hold that the union cannot sue in federal court to enforce its contracts, we express no view on the entirely separate question whether the Federal Government could bring a federal suit against a UMTA funding recipient for violating the terms of its grant agreement with the Government. Such a suit would involve a different contract from the § 13(c) agreement and the collective-bargaining agreement at issue in this case.

457 U.S. at 29 (citations omitted). This footnote clearly does not support petitioner's claim that "the Court has left open the possibility of some instances of a federal remedy" for an individual employee of a transit system. Instead, the Court simply stated that it was not addressing the question of whether the Federal Government could bring a federal suit to enforce a § 13(c) agreement and that such an action would not even involve a 13(c) labor agreement and collective bargaining agreement as present here. It is impossible to ascertain how petitioner can claim support for his argument from this, or any other portion of the decision.

Accordingly, it is clear that petitioner's argument is absolutely lacking in substance. Petitioner is seeking this Court to overturn its decision in *Jackson Transit Authority* and provides no support other than a footnote in the case itself. The petitioner's complaint was properly dismissed by the court below and there is no basis to grant this petition.

CONCLUSION

For the foregoing reasons, Respondent Chicago Transit Authority respectfully requests that the petition for a writ of certiorari be denied.

Respectfully submitted,

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